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2008 JAN 23 AM 8:50

HAWAII LABOR
RELATIONS BOARD

Attorneys for Director of Labor
and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. OSH 2007-23
DIRECTOR, DEPARTMENT OF LABOR)	(Inspection No. 310393830)
AND INDUSTRIAL RELATIONS,)	
Complainant,)	STIPULATION AND SETTLEMENT
vs.)	AGREEMENT; EXHIBIT A-C;
)	APPROVAL AND ORDER
RED SAIL SPORTS WAIKOLOA,)	
INC.)	
Respondent.)	
<u>Red Sail. SA.</u>)	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant, Director of Labor and Industrial Relations ("Director"), and Respondent, RED SAIL SPORTS WAIKOLOA, INC., having reached a settlement of the above-captioned contested case presently pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

The records of the Department of Commerce and Consumer Affairs list two business entities: Red Sail Sports Waikoloa Inc. and Red Sail Sports Waikoloa Limited Partnership. See Exhibit A.

The Hilton Waikoloa Village Hotel contracted with Red Sail Sports Limited Partnership ("Respondent") to conduct recreational water and other sports activities at the Hotel. Exhibit B.

On or about August 1, 2007, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 425 Waikoloa Beach Drive, Kamuela, HI 96743.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on September 6, 2007 ("Citation") to Red Sail Sports Waikoloa Inc. alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$2,225.00 See Exhibit C.

The Citation should have been issued to RED SAIL SPORTS WAIKOLOA LIMITED PARTNERSHIP (Respondent).

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. The Citation shall be amended to list RED SAIL SPORTS WAIKOLOA LIMITED PARTNERSHIP as the Respondent in the above-entitled matter.
3. At all relevant times, Respondent maintained a workplace at 425 Waikoloa Beach Drive, Kamuela, Hawaii 96743.
4. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS §

396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

5. Respondent agrees that it has or will abate each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22. Respondent shall submit the completed abatement certification to HIOSH no later than December 15, 2007; failure to timely do so may result in additional penalties or follow up inspections.

6. Citation 1 Items 1a and 1b and Citation 2 Item 1 and their respective characterizations are affirmed.

7. The Director reduces the aggregate penalty from \$2,225.00 to \$1,000.00 which shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement.

8. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

9. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

10. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

11. By entering into this Agreement, Respondent does not admit that it violated the cited standards of Citation 1 Items 1a and 1b and Citation 2 Item 1 for any litigation or purpose other than proceedings under the Hawaii Occupational Safety and Health Law for similar and subsequent violations occurring at Respondent's worksite 425 Waikoloa Beach Drive, Kamuela, Hawaii 96743.

12. Unless otherwise provided by this Agreement, nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

13. Upon approval of this Agreement, all proceeding before the Hawaii Labor Relations Board shall be dismissed.

DATED: Honolulu, Hawaii, January 23, 2008.

Red Sail Sports Waikoloa, Ltd.

Stephen R Hicks 1-15-08
by Stephen Hicks,
Director Of Operations

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS

Leo B. Young
Leo B. Young
Deputy Attorney General

Darwin L.D. Ching
Darwin L.D. Ching, Director
Director of Labor and Industrial
Relations, State of Hawaii

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 273

JAMES B. NICHOLSON
JAMES B. NICHOLSON, Chair

EMORY J. SPRINGER
EMORY J. SPRINGER, Member

Sarah H. Hiramami

SARAH H. HIRAKAMI, Member
R.



Department of Commerce & Consumer Affairs (DCCA)

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Examples: hospital, Kaplolan, Hawaii Information Consortium

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2 items found, displaying all items.1

Name	Record Type	File Number	Type	Status
RED SAIL SPORTS WAIKOLOA, INC.	Master Name	10761	F1	Active
RED SAIL SPORTS WAIKOLOA LIMITED PARTNERSHIP	Master Name	4703	L6	Active



EXHIBIT A

Bec

BEACH CONCESSION AGREEMENT

THIS BEACH CONCESSION AGREEMENT ("this Agreement"), entered into the 7th day of April, 1997, effective as of July 14th, 1996, by and between GLOBAL RESORT PARTNERS, a Hawaii partnership ("Owner"), and ~~GLOBAL RESORT PARTNERS~~ GLOBAL RESORT PARTNERS, an Illinois limited partnership duly registered to conduct business in the State of Hawaii ("RSS").

W I T N E S S E T H :

WHEREAS, Owner owns a hotel known as the Hilton Waikoloa Village ("the Hotel") located at Anaehoomalu, South Kohala, Island and State of Hawaii, on Lot 3 of File Plan 1853, as filed in the Bureau of Conveyances of the State of Hawaii ("the Hotel property"), which is managed by Hilton Hotels Corporation, as Owner's agent ("Hilton"); and

WHEREAS, Owner has rights to use the beach area (Lot 11 of File Plan 1562, as filed in said Bureau) fronting Anaehoomalu Bay which is located approximately 3,000 feet to the south of the Hotel property by virtue of that certain Beach Concession Access Agreement by and between Owner's predecessor-in-interest and Waikoloa Beach Association, a Hawaii non-profit corporation, ("WBA") dated September 12, 1988, a Short Form of which, dated November 5, 1993, is recorded in said Bureau as Document No. 93-183746 (said Beach Concession Access Agreement, as the same may hereafter from time to time be amended, is hereafter called "the Beach Agreement") and RSS desires notice of any amendments and downward rent concessions due to RSS should amendments affect the ability of RSS to operate and/or moor vessels at Anaehoomalu Bay; and

WHEREAS, RSS is engaged in the operation of water and other sports facilities; and

WHEREAS, Owner and RSS desire to enter into this Agreement to allow RSS to operate a water sports facility for the Hotel guests and visitors to the Hotel;

NOW, THEREFORE in consideration of the foregoing and the mutual covenants and conditions hereinafter set forth, and subject thereto, the parties hereto do hereby agree as follows:

0055566.07
09/13/96 at 4:30pm

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HHC-Waikoloa

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813
Phone: (808) 586-9110 FAX: (808) 586-9104



Certified Number: 7006 2150 0004 4051 3635

Citation and Notification of Penalty

To:
Red Sail Sports Waikoloa Inc
and its successors
425 Waikoloa Beach Dr
Kamuela, HI 96743

Inspection Number: 310393830 (Charles Clark)
Inspection Date(s): 08/01/2007 - 08/01/2007
Issuance Date: 09/06/2007
OSHSO ID: X8851
Optional Report No.: 06707
Inspection Type: Complaint
Scope of Inspection: Partial Inspection

Inspection Site:
425 Waikoloa Beach Dr
Kamuela, HI 96743

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

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Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful and Repeat** violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - you should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

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NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 09/06/2007. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.

044

STATE OF HAWAII
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 310393830
Inspection Dates: 08/01/2007 - 08/01/2007



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 09/06/2007

Citation and Notification of Penalty

Company Name: Red Sail Sports Waikoloa Inc
Inspection Site: 425 Waikoloa Beach Dr, Kamuela, HI 96743

The alleged violations below (1a & 1b) have been grouped because they involve similar or related hazards that may increase the potential for illness or injury resulting from an accident.

Citation 1 Item 1a Type of Violation: Serious

29 CFR 1910.132(d)(1) [Refer to chapter 12-64.1, HAR] was violated because:

The company did not assess the workplace for the slip and fall hazards that were present which would necessitate the use of personal protective equipment such as slip resistant shoes. The lack of a workplace hazard assessment and use of slip resistant shoes for the areas where the floors were constantly wet exposed the employees to serious injuries from slip and fall hazards.

29 CFR 1910.132(d)(1) states "The employer shall assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, or likely to be present, the employer shall:

- (i) Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment;
- (ii) Communicate selection decisions to each affected employee; and
- (iii) Select PPE that properly fits each affected employee."

Location: Bridge areas and stairways to slides at Kona and Kohala Pools.

Date By Which Violation Must be Abated:
Penalty:

10/09/2007
\$1,225.00

045

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 310393830
Inspection Dates: 08/01/2007 - 08/01/2007



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 09/06/2007

Citation and Notification of Penalty

Company Name: Red Sail Sports Waikoloa Inc
Inspection Site: 425 Waikoloa Beach Dr, Kamuela, HI 96743

Citation 1 Item 1b Type of Violation: **Serious**

29 CFR 1910.132(d)(2) [Refer to chapter 12-64.1, HAR] was violated because:

A written certification to verify that the required workplace hazard assessment had been performed was not available during the complaint inspection.

29 CFR 1910.132(d)(2) states "The employer shall verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, which identifies the document as a certification of hazard assessment."

Location: Establishment

Date By Which Violation Must be Abated: 10/09/2007

046

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 310393830
Inspection Dates: 08/01/2007 - 08/01/2007



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 09/06/2007

Citation and Notification of Penalty

Company Name: Red Sail Sports Waikoloa Inc
Inspection Site: 425 Waikoloa Beach Dr, Kamuela, HI 96743

Citation 2 Item 1 Type of Violation: Other

29 CFR 1904.1(a)(2) [Refer to chapter 12-52.1, HAR] was violated because:

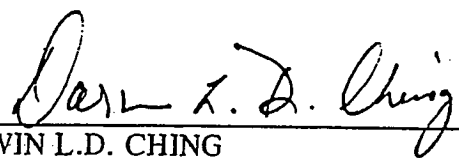
The OSHA 300 Log of Work-Related Injuries and Illnesses, OSHA 301 Injury and Illness Incident report, and OSHA 300A Summary of Work-Related Injuries and Illnesses forms were not maintained.

29 CFR 1904.1(a)(2) states "If your company had more than ten (10) employees at any time during the last calendar year, you must keep OSHA injury and illness records unless your establishment is classified as a partially exempt industry under 1904.2."

Location: Establishment

Date By Which Violation Must be Abated:
Penalty:

10/09/2007
\$1,000.00



DARWIN L.D. CHING
DIRECTOR

047

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813

SUMMARY OF PENALTIES

Company Name: Red Sail Sports Waikoloa Inc
Inspection Site: 425 Waikoloa Beach Dr
Kamuela, HI 96743
Issuance Date: 09/06/2007

Summary of Penalties for Inspection Number 310393830

Citation 01, Serious	=	\$1,225.00
Citation 02, Other		\$1,000.00

TOTAL PENALTIES	=	\$2,225.00
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Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.

ABATEMENT CERTIFICATION

State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

Red Sail Sports Waikoloa Inc
425 Waikoloa Beach Dr
Kamuela, HI 96743

The hazard referenced in Inspection Number 310393830 for the violation identified as Citation 01 and item 001a was corrected on 10-9-07.

How corrected Hazard assessment attached

The hazard referenced in Inspection Number 310393830 for the violation identified as Citation 01 and item 001b was corrected on 10-9-07.

How corrected Completed form attached

The hazard referenced in Inspection Number 310393830 for the violation identified as Citation 02 and item 001 was corrected on 10-9-07.

How corrected OSHA forms 300 + 301 updated, All managers notified of location of said forms

I attest that the Information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.

Steph R Hicks 1-15-08
Signature

Stephen R Hicks
Type or Printed Name

PERSONAL PROTECTIVE EQUIPMENT (PPE)
NEEDS ASSESSMENT

OSHA's standard, Personal Protective Equipment for General Industry, 29 CFR 1910.132, requires employers to determine if hazards are present, or likely to be present, which necessitates the use of PPE. This form is intended to assist the user in complying with the workplace assessment requirement. The user is advised to become familiar with all requirements of the subject standard.

EYE AND FACE PROTECTION (1910.133)

Any exposures to eye and face from flying particles, hot liquids, liquid chemicals, acids or caustic liquids, chemical gases of vapor, or potentially injurious light radiation.

<u>Department/Area of Exposure</u>	<u>Type of Exposure</u>	<u>Type of PPE Needed</u>	<u>Job Task</u>
Recreation / Pool Decks	Open Sun Exposure	Sun Screen	Organizing pool deck and monitoring slides

HEAD PROTECTION (1910.135)

Is there potential injury to the head from falling objects or electrical shock, requiring protective helmets?

<u>Department/Area of Exposure</u>	<u>Type of Exposure</u>	<u>Type of PPE Needed</u>	<u>Job Task</u>
Recreation / Pool Decks	None		

FOOT PROTECTION (1910.136)

Are there risks of foot/toe injuries due to falling or rolling objects, or objects piercing the sole, or are employee's feet exposed to electrical hazards?

<u>Department/Area of Exposure</u>	<u>Type of Exposure</u>	<u>Type of PPE Needed</u>	<u>Job Task</u>
Recreation / Pool Decks_	Wet Stone Decks Slip and fall Hazard	Anti-slip shoes_	Organizing pool decks and monitoring slides

HAND PROTECTION (1910.138)

Are employee's hands exposed to hazards from skin absorption of harmful substances, severe cuts or lacerations, severe abrasions, punctures, chemical or thermal burns, or harmful extreme temperatures?

<u>Department/Area of Exposure</u>	<u>Type of Exposure</u>	<u>Type of PPE Needed</u>	<u>Job Task</u>
Recreation/Pools Decks	Cleaning Chemicals	Gloves	Cleaning Chairs and tables in pool

EAR PROTECTION (1910.95c)

Whenever noise levels equal or exceed an 8-hour time-weighted average sound level of 85 decibels or a dose of fifty percent.

<u>Department/Area of Exposure</u>	<u>Type of Exposure</u>	<u>Type of PPE Needed</u>	<u>Job Task</u>
Recreation / Pool Decks	None		

The following notes are related to the abatement of violations noted in citation relating to Inspection 310393830

Hilton Waikoloa Village Hotel and their subcontractor Hawaii Care and Cleaning are responsible for the deck areas of the property. These areas have now been treated with Safe-Step a chemical process which increases the coefficient of friction on the Quartzite areas in question.

Three types of shoes will be recommended for use while working in the pool areas managed by Red Sail Sports, to be completed by 10-30-07

All team members will be instructed on the potential dangers of sun exposure, and the need to use sunscreen in their work area. Sun screen is available at work, to be completed by 10-30-07

Not all team members have a reaction to the environmentally friendly chemicals we use. Gloves will be freely available in the work area for all team members when using cleaning products, to be completed by 10-24-07

Department Head Stephen Hicks
Signature *Stephen R Hicks*

Date 10-10-07

Revised 9/26/07